

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

HENRY WASHINGTON,	:	
	:	Civil Action No. 4:CV-08-1283
Plaintiff,	:	
	:	(Judge Jones)
v.	:	
	:	(Magistrate Judge Carlson)
JAMES L. GRACE, et al.,	:	
	:	Filed Via Electronic Case Filing
Defendants	:	

**DEFENDANTS' SECOND MOTION
FOR SANCTIONS AGAINST PLAINTIFF**

AND NOW, come the Defendants James L. Grace, *et al.*, by and through their attorney, Raymond W. Dorian, Assistant Counsel, and move this Honorable Court, pursuant to Federal Rule of Civil Procedure 37(a)(3)(B) as follows:

1. This is a civil rights action brought by the Plaintiff, who is an inmate formerly incarcerated at the State Correctional Institutions at Fayette ("SCI-Fayette") and Huntingdon ("SCI-Huntingdon").
2. The Defendants are past and present employees of the Department of Corrections at SCI-Fayette and SCI-Huntingdon.
3. The Plaintiff's original Amended Complaint is over 70 pages long and contains almost 200 separate paragraphs. There are over 40 named Defendants. In his Amended Complaint, the Plaintiff accuses the Defendants of various actions, including threats to kill him, denial of food, shower, and exercise yard, excessive

use of force against him, denial of medical care, and damage to his personal property. Amended Complaint at ¶¶ 1-10 *et passim*.

4. This matter is on remand from the Third Circuit Court of Appeals. The Third Circuit affirmed in part Judge Jones' prior Order of June 28, 2011, dismissing Plaintiff's Amended Complaint, but found that the Plaintiff had sufficiently pled certain claims, including alleged equal protection, retaliation and use of force claims. *See Per Curiam* Order of September 27, 2011.

5. In his Memorandum Opinion and Order, dated February 7, 2012 (Doc. 87), Magistrate Judge Carlson consolidated the two cases filed by the Plaintiff and directed that all future filings be made under docket no. 4:08-CV-1283. *Id.*

6. The Defendants have filed an Answer to Plaintiff's Third Amended Complaint with Affirmative Defenses.

7. The Defendants scheduled the Plaintiff's first deposition for January 28, 2013. At the first scheduled deposition, the Plaintiff refused to answer most of the undersigned counsel's questions until he had read a Declaration which the Plaintiff had written. After the undersigned counsel read the Declaration, the Plaintiff refused to answer any of counsel's questions and refused to speak at all. Counsel also advised the Plaintiff he would file a motion for sanctions, if he continued to refuse to cooperate with the deposition. Counsel ended the deposition after the Plaintiff still refused to respond to any questions posed by counsel.

8. The Defendants previously filed a Motion for Sanctions, which the Court treated as a Motion to Compel and granted. *See* Order of February 26, 2013 (Doc. 120). In that Order, the Plaintiff was warned that his failure to cooperate with the deposition could result in sanctions, including possible dismissal of his claims.

9. On March 19, 2013, the second deposition of the Plaintiff was held. The Plaintiff again refused to answer counsel's questions and repeated continuously that his life was in danger at his current prison. After it was clear that the Plaintiff was not going to cooperate, counsel terminated the deposition. A true and correct copy of the Plaintiff's deposition transcript is attached to the Defendants' Appendix to this Motion.

10. The deposition of the Plaintiff is necessary, since his allegations raise credibility issues.

11. Sanctions should be imposed against the Plaintiff, including the dismissal of his lawsuit. The Plaintiff has refused to cooperate with his deposition for a second time and in flagrant violation of the Court's Order of February 26, 2013. Monetary sanctions will not suffice.

12. This Motion is brought in good faith.

WHEREFORE, the Defendants request that the Court grant their Second Motion for Sanctions and impose sanctions against the Plaintiff for failing to cooperate in his duly-noticed deposition, including dismissal of his claims.

Respectfully submitted,

Office of General Counsel

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Dated: April 2, 2013

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CERTIFICATE OF SERVICE

I hereby certify that I am this day depositing in the U.S. mail a true and correct copy of the Defendants' Second Motion for Sanctions against Plaintiff in the above-referenced matter.

Service by first-class mail
addressed as follows:

Henry Washington, AM-3086
SCI-Greene
175 Progress Drive
Waynesburg, PA 15370-8090

s/ Rose A. White
Rose A. White
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(717) 728-7763

Dated: April 2, 2013